

ORIGINAL

Antonio Gill



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Arizona American Water

W-01303A-09-0343

SW-01303A-09-0343

IN OPPOSITION

From: John LeSueur on behalf of Pierce-Web
Sent: Monday, April 26, 2010 12:50 PM
To: Antonio Gill
Subject: FW: Comment: Arizona American Water Rate Filing; Docket: W-01303A-09-0343
Attachments: Executive Summary Final 4-15-2010.pdf

Please docket this email and attachment.

From: Bob Golembe [mailto: [REDACTED]]
Sent: Friday, April 23, 2010 5:12 PM
To: Pierce-Web
Cc: Mayes-WebEmail; Newman-Web; Kennedy-Web; Stump-Web; Stephen Attorney Weber
Subject: Comment: Arizona American Water Rate Filing; Docket: W-01303A-09-0343

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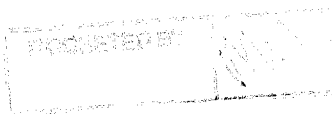
Dear Commissioner Pierce,

At the opening hearing of this docket on April 18 or 19, I recall you questioned the parties awareness of Anthem's class action suit. Shortly thereafter, Anthem residents received an update on the case (see attachment) provided by the law firm of Kasdan, Simons.

I wish to provide you with this public document for information purposes.

Bob Golembe
Anthem, AZ

Arizona Corporation Commission
DOCKETED
APR 26 2010



Anthem Water Case

Executive Summary

April 15, 2010

This letter will serve as an update on the Anthem Water case. For updates on newsworthy events, please click on the “news” tab. To see documents filed with the court, please click on the “pleadings” tab.

Procedural History

This matter began with the Kasdan Simonds law firm filing a class action lawsuit against Del Webb/Pulte (Pulte) in the name of four Anthem homeowners and on behalf of all other Anthem homeowners who were similarly situated. That class action lawsuit was filed in the Superior Court of Arizona in response to unprecedented water rate increases. The case was later moved to the United States District Court for the District of Arizona.

Sometime later, the Boates and Crump law firm, in association with The Edgar Law Firm, filed a separate class action lawsuit in the name of one Anthem homeowner. The three law firms joined forces and the two lawsuits were combined into one.

Having the three firms work together on one larger case will help the Anthem community because each firm provides a unique service and focuses on a discrete, highly-technical aspect of Arizona law. Kasdan Simonds practices exclusively in the field of complex construction defects-related matters and has extensive experience in lawsuits and arbitrations against Pulte and the attorneys representing Pulte. The Edgar firm focuses its practice in the field of class actions and mass tort lawsuits, while Boates and Crump adds a measure of convenience to the community because its offices are in the Anthem community itself, and its attorneys are known to many in Anthem.

What the Lawsuit Is About

Under Arizona law, when Pulte built the homes in Anthem it was required to notify any potential homebuyers if the cost of the water infrastructure needed to provide water to the homes in the community was *not* included in the purchase price of the home.

Pulte failed to disclose this fact and never notified the home-buying public that the cost of the water and wastewater infrastructure (the supply lines, treatment plants, etc.), was not included in the price of the home, but would be paid for through future water rate increases instead. That is, Pulte never notified homebuyers that it loaned the water company nearly \$100 Million to build the water infrastructure and that the loan would be repaid to the water company *by the homeowners* through future water rate increases.

For its part, Pulte has taken the position that it has nothing to do with any water rate increases. Pulte maintains that any issues with water rate increases are between the water company and the Arizona Corporation Commission. We believe that position is preposterous. Of course the cost of repaying the loan to Pulte would be passed on to the homeowners. How else would the water company obtain the money to re-pay Pulte if not through rate increases? While there are certainly no guarantees of success, we hope the Court will see Pulte's "ignorant" and "innocent" plea as falsely as we do.

The Water Company Rate Increase Hearings Are Not Connected to the Lawsuit

The homeowners are *not* suing the water company. It is important that you understand the difference between the Anthem Water case and the Water Company Rate Increase Hearings because you will be reading about them in the newspapers. The Anthem Water case is the lawsuit between the homeowners of Anthem and Pulte stemming from Pulte's decision to conceal the cost of the water infrastructure from the home-buying public. Simply put, the lawsuit seeks to have either Pulte pay for any water rate increases through direct payment to the homeowners or to have Pulte forgive the water company's debt altogether, thereby eliminating the "need" for any rate increase. In either case, the point is that the burden should not be placed on the homeowners.

The Water Company Rate Increase Hearings are before the Arizona Corporation Commission and they are between the water company and the Corporation Commission. Those hearings will deal with whether the water company will be allowed to raise the rate for water service at Anthem.

The Process of Class Certification

Getting a case certified as a "class action" is a lengthy process because the defendants (in this case Pulte) do everything to fight a class action certification. The process involves a number of legal requirements that must be proven before a judge can certify an action as a "class action." To that end, we filed a Motion for Class Certification (a request that the judge certify the class). Pulte filed a response to that Motion, essentially asking the judge to deny the request. We are now waiting for the judge to set a court date for oral argument. Once the judge issues the ruling on whether the case will be certified as a class, we will notify you.

What Happens if the Judge Certifies the Class?

The purpose of a class action is to provide a convenient manner in which to prosecute or defend claims involving several entities or large numbers of people. Class actions are designed to address multiple claims on a consistent basis at the least cost and with the least disruption to the judicial system.

The Anthem water case, with thousands of homeowners being similarly situated, is an ideal situation for a class action because the claims being raised are the same and the attorneys representing the homeowners and Pulte are the same. If it is not certified as

a class action, it could mean that the owner of each home would have to actively participate in the lawsuit, which would involve appearing for deposition or trial testimony. If this case is certified as a class action, it could very well proceed with a relatively small number of homeowners, perhaps as few as five, representing the entire Anthem homeowner community. In that case, only those five homeowners would be active participants in the lawsuit, but any benefits achieved would flow to all members of the class..

This case is also suitable for class treatment as the individual claims alone are too small to justify the legal costs involved. We estimate that the impact on each home is somewhat less than \$10,000. The cost of litigating such a claim, if brought by individual homeowners, would quickly overcome any potential recovery. As you may be able to gather, the likelihood of thousands of individual actions is very low, which is why Pulte is fighting very hard to avoid class certification.

Pulte's primary argument against certification is their position that our case requires proof that each member of the class "relied" on Pulte's failure to properly inform them of the potential for the utility hikes based upon the infrastructure payments paid by the utility companies. Pulte says that if we must prove reliance by each of the thousands of class members, we simply cannot proceed as a class action. Our position is that Arizona law does not require proof of individual reliance under the circumstances of this case, or, in the alternative, reliance may be presumed by the Court.

Motion for Summary Judgment

Pulte filed a Motion for Summary Judgment asking the judge to dismiss the portion of the lawsuit that involves subsequent purchasers (those who bought their Anthem home from someone other than Pulte). Pulte's argument is that it had no duty to disclose anything to anyone who didn't buy a home directly from Pulte.

Our position is that Pulte's duty wasn't merely to those who *actually* bought a home from Pulte, but rather to everyone in the home-buying public (via a recorded public disclosure) that the cost of the water infrastructure was in the form of a loan from Pulte to the water company which would ultimately be re-paid by homeowners through rate increases.

Pulte's Motion for Summary Judgment also seeks to dismiss all claims by all homeowners under a statute of limitations theory. That is, Pulte argues that the homeowners waited too long to sue Pulte. For details regarding Pulte's Motion for Summary Judgment and our response, please click on the "pleadings" tab.

The Discovery Process

As with any lawsuit of this size, the parties are engaged in exchanging hundreds of thousands of pages of documents, interviewing witnesses, and deposing experts. Generally speaking, that process is known as "discovery." We are in the midst of that

process as Pulte has deposed three of the named homeowners and we, in turn, have deposed key witnesses from Pulte, and are in the process of taking more depositions, including Pulte's experts.

Jury Trial

The jury trial in this matter is set for October 13, 2010. Once the judge issues a trial calendar, we will notify you.

In the meantime, if you would like to receive updates via e-mail, please send your request and your e-mail address to anthemwater@ksrv-az.com.